

State of South Dakota

NINETY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2016

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HOUSE JUDICIARY ENGROSSED NO. **HB 1058** 01/22/2016

Introduced by: Representatives Johns, Gosch, Schoenbeck, and Stevens and Senator Rusch

1 FOR AN ACT ENTITLED, An Act to revise the procedure for recovery of abandoned mineral
2 interests.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 43-30A-2 be amended to read as follows:

5 43-30A-2. A mineral interest ~~shall, if unused for twenty-three years, be deemed to be~~
6 ~~abandoned, unless a statement of claim is recorded in accordance with § 43-30A-4~~ is abandoned
7 if it has not been used for a period of twenty-three years or more. Title to an abandoned mineral
8 interest ~~shall vest~~ vests in the owner of the surface estate in the land in, or under, which the
9 mineral interest is located on the date of abandonment.

10 Section 2. That § 43-30A-3 be amended to read as follows:

11 43-30A-3. A mineral interest is ~~deemed to be~~ used if:

- 12 (1) Minerals are produced ~~under that~~ by or with the express permission of the record
13 owner of the mineral interest;
- 14 (2) Operations are conducted ~~thereon~~ for injection, withdrawal, storage, or disposal of
15 water, gas, or other fluid substances to produce or enhance the production of minerals



1 by or with the express permission of the record holder of the mineral interest;

2 (3) ~~In the case of~~ For solid minerals, there is production from a common vein or seam
3 by ~~the owners~~ or with the express permission of the record owner of the mineral
4 interest;

5 (4) Any valid conveyance, ~~valid~~ lease, mortgage, assignment, ~~order in an estate~~
6 ~~settlement proceeding, inheritance tax determination affidavit, probate distribution,~~
7 termination of joint tenancy interest affidavit, termination of life estate affidavit,
8 transfer on death deed, or any judgment or decree that makes specific reference to the
9 record owner's mineral interest is recorded in the office of the register of deeds for
10 the county in which the mineral interest is located;

11 (5) The mineral interest is subject to an ~~order or an~~ agreement to pool or unitize;

12 (6) ~~Taxes are paid on the mineral interest on behalf of the owner;~~

13 ~~—(7)~~ A statement of claim is recorded in compliance with § 43-30A-4; or

14 ~~(8)(7)~~ A proper instrument describing the mineral interest has been recorded prior to an
15 affidavit recorded under prior law pursuant to § 43-30-7, in the office of the register
16 of deeds for the county in which the mineral interest is located.

17 Section 3. That § 43-30A-4 be amended to read:

18 43-30A-4. A statement of claim shall:

19 (1) Be recorded for the record owner of the mineral interest prior to the end of the
20 twenty-three-year period set forth in § 43-30A-2. A joint tenant, but not a tenant in
21 common, may record a claim on behalf of himself and other joint tenants;

22 (2) Contain the name and mailing address of the record owner of the mineral interest and
23 a legal description of the land on or under which the mineral interest is located; and

24 (3) Be recorded in the office of the register of deeds for the county in which the mineral

interest is located.

A mineral interest is ~~deemed to be~~ in use on the date of recording if the recording is made within the time provided by this section. ~~A statement of claim filed after July 31, 2013, by a person other than the owner of record of the mineral interest is not effective to preserve a mineral interest unless accompanied by a reference to the name of the record owner under whom the owner of the mineral interest claims.~~

Section 4. That § 43-30A-5 be amended to read as follows:

43-30A-5. Failure to record the statement of claim within the time period provided in § 43-30A-4 does not cause a mineral interest to be ~~extinguished if:~~

~~(1) The owner of record abandoned if the record owner of the mineral interest satisfies either one of the following requirements records a statement of claim pursuant to § 43-30A-4 within sixty days after first completion of the publication of the notice provided for in of lapse pursuant to § 43-30A-6:~~

~~(a) Files with the county register of deeds a statement of claim as required in § 43-30A-4; or~~

~~(b) Files with the county register of deeds documentation that at least one of the activities under § 43-30A-3 took place during the twenty-year period immediately preceding the first publication of notice;~~

~~(2) A person other than the owner of record of the mineral interest files with the county register of deeds within sixty days after the first publication of the notice provided for in § 43-30A-6 an affidavit under oath or a declaration under oath which includes an explanation of the factual and legal basis for the person's assertion of title to the mineral interest. This explanation shall be accompanied by documentation supporting the assertion or an explanation why documentation is unavailable.~~

Section 5. That § 43-30A-6 be amended to read as follows:

43-30A-6. In order to succeed to the ownership of a an abandoned mineral interest ~~upon its~~
~~lapse~~, a surface owner shall give notice of the lapse of the mineral interest by publication. The
publication shall be made once each week for three weeks in the official newspaper of the
county in which the mineral interest is located. ~~If the address of the mineral interest owner is~~
~~of record or can be determined upon reasonable inquiry, notice~~ Notice shall also be ~~made~~ given
by mailing a copy of the notice by registered or certified mail, ~~return receipt requested~~, to the
record owner of the mineral interest ~~within~~ at the record owner's address of record no later than
ten days after the last publication ~~is made~~.

The surface owner may rely upon the record mineral owner's last address of record in the
office of county register of deeds in which the mineral interest is located. It is the record mineral
owner's obligation to maintain an address of record in the office of the register of deeds in the
county in which their mineral interest is located. Failure to maintain an address of record is a
waiver by the record mineral owner of the requirement to mail a copy of the notice of lapse to
the record mineral owner.

The notice shall state the name of the record owner of the mineral interest, a the legal
description of the land on or under which the mineral interest involved is located, and the name
of the person giving the notice.

~~A~~ Recording a copy of the notice and an affidavit of its ~~service, if recorded~~ publication and
any mailing in the office of the register of deeds for the county in which the mineral interest is
located, is prima facie evidence ~~in any legal proceeding that such~~ the notice has been properly
given.

Section 6. That § 43-30A-6.1 be repealed.

~~43-30A-6.1. To constitute a reasonable inquiry as provided in § 43-30A-6, the surface owner~~

1 ~~or the owner's authorized agent shall conduct a search of:~~

2 ~~— (1) — The county register of deed's records for the existence of any uses as defined in § 43-~~
3 ~~30A-3 by the owner of the mineral interest;~~

4 ~~— (2) — The Unified Judicial System's records for the existence of any judgments, liens, or~~
5 ~~probate records which identify the owner of the mineral interest;~~

6 ~~— (3) — The social security death index for the last-known residence of the owner of the~~
7 ~~mineral interest, if deceased; and~~

8 ~~— (4) — One or more public internet databases to locate or identify the owner of the mineral~~
9 ~~interest or any known heirs of the owner. The surface owner is not required to~~
10 ~~conduct internet searches on private fee internet databases.~~

11 Section 7. That § 43-30A-11 be repealed.

12 ~~— 43-30A-11. The surface owner of the land in or under which the mineral interest is located~~
13 ~~who succeeds to the ownership of a mineral interest upon its lapse under this chapter is entitled~~
14 ~~to record a statement of succession in interest indicating that that surface owner of the land in~~
15 ~~or under which the mineral interest is located has succeeded to the ownership of the mineral~~
16 ~~interest.~~

17 Section 8. That § 43-30A-12 be repealed.

18 ~~— 43-30A-12. Upon completion of the procedure provided in this chapter, the surface owner~~
19 ~~may maintain an action in circuit court in the county in which the minerals are located and~~
20 ~~obtain a judgment in quiet title in the owner of the surface estate. In an action brought under this~~
21 ~~section, the surface owner shall submit evidence to the circuit court establishing that all~~
22 ~~procedures required by this chapter were properly completed and that a reasonable inquiry was~~
23 ~~conducted. If the circuit court finds that the surface owner has complied with all procedures of~~
24 ~~this chapter and has conducted a reasonable inquiry, the circuit court shall issue its findings of~~

1 fact, conclusions of law, and enter judgment perfecting title to the mineral interest in the surface
2 owner.

3 ~~— A judgment obtained by the surface owner in compliance with this section is deemed~~
4 ~~conclusive except for fraud, misrepresentation, or other misconduct.~~

5 ~~— A mineral lessee that obtains a lease from the surface owner, which owner has obtained a~~
6 ~~judgment to minerals pursuant to this section, is deemed a bona fide purchaser and its lease~~
7 ~~remains effective in the event the judgment is subsequently vacated for any reason. The lessee~~
8 ~~is not liable to any third party for lease bonus, royalties, or any other proceeds paid to the surface~~
9 ~~owner under the lease before the judgment being vacated.~~